I now come to the crucial point. Who is to decide the issue of "reason to believe"? D.S.P. Ong Kian Tiong himself or a Court? If it is for the Court to decide then the Court must have all the material evidence before it otherwise it would be futile to ask the Court to decide. It is quite clear that the information that D.S.P. Ong has are confidential and section 53 of the Ordinance provides as follows:

"53. Nothing in this Ordinance or in any rules made under section 59 of this Ordinance shall require the Chief Secretary or any other public servant to disclose facts which he considers it to be against the public interest to disclose."

D.S.P. Ong Kian Tiong therefore cannot be required to set out the grounds of his belief or to give the information which led him to the opinion which he formed. In fact in this case D.S.P. Ong Kian Tiong has declared that it would be against the public interest to disclose names, dates, times, places and other details relating to the activities of the applicant.

For these reasons I am of the opinion that section 55(1) imposes a subjective test and as D.S.P. Ong Kian Tiong honestly supposed that he had reason to believe the required thing this Court cannot go behind his statement that he had such reason to believe.

The order nisi must be discharged.

Order accordingly.

Solicitors: *Marshall & Smith.*

RAMANUJ PANDEY v. STEPHEN

[A. C. J. (Rose C.J.) February 8, 1960]

[Singapore — District Court Appeal No. 38 of 1959]

Money and Moneylending — Claim for recovery of loan and interest on promissory note executed before the Moneylenders Ordinance, 1959 came into operation — Whether barred by s.15 — Whether lender was "unlicensed moneylender" — Whether taking step in action for the recovery of money lent amounted to carrying on the business of a moneylender.

INTERPRETATION.

The appellant claimed against the respondent a sum of $399 being the principal and interest due on a promissory note for $350 dated 6th February 1959 and executed by the respondent. Before the final hearing of the action, the Moneylenders Ordinance, 1959 came into operation. Section 15 of the Ordinance provided that "no contract for the repayment of money lent after the coming into operation of this Ordinance by an unlicensed moneylender shall be enforceable." Counsel for the respondent contended that the appellant's action was thereby barred.

Held: (1) upon the ordinary rules of construction the words "money lent after the coming into operation of this Ordinance" must be read together and can only mean that the section only applies to loans made on or after the 11th of September 1959 — the date on which the Ordinance came into operation. To hold otherwise would be to equate the phrase "lent after the coming into operation" with "lent whether before or after the coming into operation." The respondent therefore failed on the very threshold of his case in that section 15 was not applicable to a loan made prior to the coming into operation of the Ordinance;

(2) there was no ambiguity in section 15 of the Ordinance and even if there was, then, upon the normal rule applicable to the construction of statutes, that ambiguity must be resolved in favour of the *status quo* and therefore cannot avail the respondent;

(3) even assuming that section 15 was applicable to a loan made prior to the coming into operation of the Ordinance, the type of moneylender contemplated by the section is a person who falls within the meaning of a "moneylender" in section 2 of the Ordinance at any time subsequent to the coming into operation of the Ordinance. To hold otherwise would lead to absurdities as regards actions pending at the time of the coming into operation of the Ordinance;

(4) a person who has ceased to carry on the business of a moneylender before the coming into operation of the Moneylenders Ordinance is not debarred from recovering what is due on his moneylending contracts by reason of the fact that he has not elected to take out a licence under section 5;

(5) there was no evidence that the appellant was an unlicensed moneylender within the meaning of section 15 of the Ordinance;

(6) the appeal must be allowed, the judgment of the Court below set aside and judgment must be entered for the appellant for the amount claimed.

Cases referred to:—

(1) *Hutchinson* v. *Jauncey* [1950] 1 K.B. 574.

(2) *Jonas* v. *Rosenberg* [1950] 2 K.B. 52.

DISTRICT COURT APPEAL.

C. H. Smith for the appellant.

Tan Boon Teik (Director of Legal Aid) for the respondent.

Cur. Adv. Vult.

Rose C.J.: The appellant's claim was against the respondent for the sum of $399 being the principal and interest due on a promissory note for $350 dated 6th February 1959 and executed by the respondent.

The matter came on for trial before the Second Civil District Judge on the 22nd of July, the 5th of August and the 12th of September 1959. The Moneylenders Ordinance, 1959 came into operation on the 11th of September 1959, that is to say, the day before the final hearing of the action.

Section 15 of the Ordinance provides that

"No contract for the repayment of money lent after the coming into operation of this Ordinance by an unlicensed moneylender shall be enforceable:"

Learned counsel for the respondent contends that the appellant's action is thereby barred. It seems to me that upon the ordinary rules of construction the words "money lent after the coming into operation of the Ordinance" must be read together and can only mean that the section only applies to loans made on or after the 11th of September 1959. To hold otherwise, in my view, would be to equate the phrase "lent after the coming into operation" with "lent whether before or after the coming into operation".

I do not myself consider that there is an ambiguity here, but even if there is then, upon the normal rule applicable to the construction of statutes, that ambiguity must be resolved in favour of the *status quo* and therefore cannot avail the respondent.

Incidentally, although the matter has no direct bearing on the point under consideration,

I was referred in the course of argument to a draft bill, now before the legislature, in which there appears an amendment to section 15 which puts beyond question that the scope of the section as amended covers loans made whether before or after the coming into operation of the Ordinance.

The view that I have formed on this point is sufficient to decide the appeal, but in case my view is mistaken it is in the interests of the parties that I should consider the other matters argued before me.

On the assumption (which, as I have stated, I do not accept) that section 15 as it stands today applies to loans made before the coming into operation of the Ordinance, learned counsel for the respondent contends that such a contract is in all circumstances unenforceable unless the lender-plaintiff has taken out a moneylender's licence under section 5 of the Ordinance.

The matter, in my opinion, turns upon what class of person is covered by the phrase "unlicensed moneylender". The term "moneylender" is defined in section 2 of the Ordinance as follows:—

> '"moneylender" includes every person whose business is that of moneylending or who carries on or advertises or announces himself or holds himself out in any way as carrying on that business whether or not that person also possesses or earns property or money derived from sources other than the lending of money and whether or not that person carries on the business as a principal or as an agent . . . . . '

Before the coming into operation of the Moneylenders Ordinance on the 11th of September 1959, the phrase "unlicensed moneylender" would have had no significance, as prior to that date no moneylender in Singapore was licensed. In the light of the general rule of construction that the legislature does not use words or expressions to which no reasonable meaning or purpose can be attached, it follows, in my opinion, that the type of moneylender contemplated by the section is a person who falls within the meaning of a "moneylender" in section 2 of the Ordinance at any time subsequent to the coming into operation of the Ordinance.

To hold otherwise would seem to me to lead to absurdities as regards actions pending at the time of the coming into operation of the Ordinance. Suppose, for example, that a person carrying on a business as a moneylender prior to the 11th of September 1959 dies before that date leaving a number of uncollected moneylending debts, it would be the duty of his executor or administrator, as the case may be, to collect the assets of the estate. Would he be barred by the terms of section 15? Learned counsel for the respondent answers "Yes" and he meets the practical difficulty by suggesting that the proper course would be for the executor or administrator to take out a moneylender's licence under section 5.

I am unable to accede to that submission. To my mind, with respect to learned counsel, the proposition is one that has only to be stated to be rejected. It is, surely, highly artificial to suggest that an executor or administrator endeavouring to recover the assets of a deceased moneylender's estate could be held to fall within the definition of "moneylender". It would therefore seem to be utterly inappropriate that he should be required to apply for a moneylender's licence.

What now is the position of a person who concedes that he was a moneylender at some stage prior to the coming into operation of the Ordinance but ceased to be one before the 11th of September 1959 ? His contention would no doubt be that the phrase "unlicensed moneylender" had no application to him at the time when he was a moneylender because a licence was then unnecessary and the phrase would have had no significance. The test therefore, he would say, would be whether at or after the time that the phrase "unlicensed moneylender" began to have significance i.e. on the 11th of September 1959, he was a moneylender within the meaning of the definition.

I am attracted by and adopt this submission which seems to me to give a sensible meaning to the section and not to be inconsistent with the purposes of the legislature as set out in the explanatory statement appearing in the Government Gazette Supplement No. 17 of the 24th of August 1959 at page 259. While I fully recognise that it is not generally permissible to have recourse to an explanatory statement in order to arrive at the correct interpretation of a statute, it is nevertheless, in my opinion, helpful on occasion to ascertain whether an interpretation which one finds attractive in the light of the actual words used is hostile to the expressed purposes of the legislature. In the present matter that would not seem to be so, as no mention is made in the explanatory statement of pending actions by a moneylender who has died or has ceased to carry on the business of a moneylender before the coming into operation of the Ordinance.

Moreover the conclusion to which I have come on this matter does not offend the general principle as stated in the Tenth Edition of Mr. Maxwell's book on the Interpretation of Statutes at page 221 that in general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights. Such intention may be by implication, as was discussed in the cases of *Hutchinson* v. *Jauncey*[1] and *Jonas* v. *Rosenberg*.[2] But, as I have already stated, there would not seem to be any such necessary implication in the statute presently under consideration.

Whether any particular plaintiff is or has been a moneylender within the meaning of the Ordinance on or after the 11th of September 1959 is a pure question of fact to be decided in each case in the light of its particular circumstances.

There is no evidence on the record and it was not suggested from the Bar (except on purely technical grounds, as discussed hereafter) that

the appellant has in fact carried on the business of a moneylender since the coming into operation of the Ordinance. The point is dealt with, by implication, at page 12 of the record where the learned District Judge offered the appellant an adjournment in order to enable him to take out a licence. This offer was refused, presumably on the footing that the appellant was not interested in continuing the business of a moneylender but was only concerned with the recovery of his prior debts. Both parties, however, were unrepresented in the Court below and the point was not further explored.

I was invited by learned counsel for the respondent to invoke section 115 of the Evidence Ordinance and presume that the appellant was still at the relevant time carrying on the business of a moneylender. Section 115 reads as follows:—

> "The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case."

It seems to me, however, that this is not a proper case for the application of that section in that there would seem to be two possibilities that are equally likely. Either that, notwithstanding the impact upon his business of the new Ordinance, the moneylender decides to continue in business or that, worried by the implications of the Ordinance, he elects to retire from business, collect his pre-existing debts and return (if, as in the present case, he is not a citizen of Singapore) to his country of origin.

Which of these two possibilities is applicable to any particular case is, in my view, a matter of evidence and not a proper subject for the exercise of a presumption. Moreover the defence that a plaintiff-moneylender's action is barred by section 15 of the Ordinance is surely a special defence which should, in the normal course, be pleaded. It would therefore be for the defendant to prove the facts which would render the bar operative. Slight proof, no doubt, would be enough and indeed in many cases (where the loan is made after the coming into operation of the Ordinance) the transaction itself which is the subject matter of the action would be sufficient proof that the plaintiff was carrying on the business of a moneylender within the definition.

It is true that in the summons the appellant is described as a moneylender and learned counsel for the respondent relies upon this as affording some evidence of the matter to be proved. The point, however, seems to me to be of no significance as at the time that the description was appended it was a correct description of the appellant's status. It ceases, in my opinion, to be a material factor when one comes to consider the question of the status of the appellant on and after the 11th of September 1959.

Learned counsel for the respondent also suggests that to take a step in an action for the recovery of money lent is tantamount to carrying on the business of a moneylender and he maintains that the mere fact that the appellant was still pursuing his claim (although it was initiated long before) on the 12th of September 1959 amounted to his carrying on the business of a moneylender.

With respect, this seems to me to be a highly artificial view of the position and in the absence of any other evidence that the appellant was ever a moneylender after the relevant date I am not disposed to accede to the proposition.

On the whole picture, therefore, there is, in my view, insufficient evidence to hold that the appellant was still carrying on the business of a moneylender on the 11th or 12th of September 1959 which were the relevant dates.

While the point is not free from difficulty I am of opinion for the reasons that I have given that (assuming, which I do not accept, that section 15 as at present drafted covers loans made before the coming into operation of the Ordinance) a person who has ceased to carry on the business of a moneylender before the coming into operation of the Moneylenders Ordinance is not debarred from recovering what is due on his moneylending contracts by reason of the fact that he has not elected to take out a licence under section 5.

Were it necessary to decide the point, therefore, I would allow the appeal on the ground that there is no evidence that the appellant was an "unlicensed moneylender" within the meaning of section 15.

I would add that on the assumption mentioned above as to the applicability of section 15, it would seem to be the case that a person who is carrying on the business of a moneylender after the coming into operation of the Ordinance is debarred from recovering even prior debts unless he is licensed; but that point does not fall to be decided in the present matter and I do not presume to decide it.

As I have stated at the outset, the respondent, in my opinion, fails on the very threshold of his case in that section 15 is not applicable to a loan made prior to the coming into operation of the Ordinance.

Apart from the contentions of law submitted on behalf of the respondent, there was no defence on the facts.

The appeal must therefore be allowed, the judgment of the Court below set aside, and judgment entered for the appellant for the amount claimed. There will be no order as to costs either here or below.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Legal Aid Bureau.*